

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

CARL N. MERKLE,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,¹
DAVID S. GRAGG,
NATALIE FRIEND WILSON,
PATRICK AUTRY, and
JOHNNY W. THOMAS,

Defendants.

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CIVIL ACTION NO. 5:20-cv- 541

NOTICE OF REMOVAL

Defendant United States of America, by and through the United States Attorney for the Western District of Texas and the undersigned Assistant United States Attorney, hereby files its Notice of Removal with this Court removing the above-entitled action now pending as Cause No. 2020-CI-06681 in the 288th Judicial District Court, Bexar County, Texas, and in support of this Notice of Removal states as follows:

1. On April 6, 2020, an action was filed as Cause No. 2020-CI-06681 in the 288th Judicial District Court, Bexar County, Texas, entitled *Carl N. Merkle, Plaintiff, v. David S. Gragg, Natalie Friend Wilson, Patrick Autry, Craig A. Gargotta, Primary Defendants; Henry G. Hobbs,*

¹ The Petition was filed with the style *Carl N. Merkle, Plaintiff, v. David S. Gragg, Natalie Friend Wilson, Patrick Autry, Craig A. Gargotta, Primary Defendants; Henry G. Hobbs, Jr., Johnny W. Thomas, Secondary Defendants*. The Federal Tort Claims Act, 28 U.S.C. §§ 1346(b); 2671-2680 (1988) (FTCA), as amended by the Federal Employees Liability Reform and Tort Compensation Act of 1988 § 5, Pub. L. No. 100-694, 102 Stat. 4563 (1988), provides that a suit against the United States shall be the exclusive remedy for persons with claims for damages resulting from the negligent or wrongful acts or omissions of federal employees taken within the scope of their office or employment. Upon removal, the United States of America is being substituted for Defendants Craig A. Gargotta and Henry G. Hobbs pursuant to 28 U.S.C. § 2679(d)(1). See Exhibit 3.

Jr., Johnny W. Thomas, Secondary Defendants. A copy of Plaintiffs' Original Petition and all filings in the state-court action are attached hereto as **Exhibit 1**.

2. Defendant Craig A. Gargotta ("Judge Gargotta") is, and at all times relevant hereto was, a Bankruptcy Judge in and for the Western District of Texas. *See* Exhibit 3.

3. Defendant Henry G. Hobbs ("Mr. Hobbs") is, and at all times relevant hereto was, a United States Trustee for Region 7. *See* Exhibit 3.

4. The Petition makes numerous vague, disjointed, and confusing claims related to the handling and administration of his bankruptcy estate. The Petition alleges, inter alia, that Judge Gargotta participated in a "fraud" scheme involving Plaintiff's bankruptcy estate. The Petition claims to sound in tort and arguably includes claims for "concealment," "criminal negligence," "fraud," "theft," and "barratry," "deception," and intentional or reckless infliction of emotional distress. Pet. ¶¶ 38 ("This case is a civil tort case."), 43–44.² No specific allegations are made against Mr. Hobbs, though he remains named as a Defendant in this "tort" matter.

5. All of Judge Gargotta's actions/omissions of which Plaintiff complains were taken in the context of litigation pending before him as a United States District Bankruptcy Judge and under color of such office. Removal is, therefore, proper pursuant to Title 28 U.S.C. § 1442(a)(1).

² The Petition appears to be in violation of multiple court orders barring Plaintiff from filing baseless, abusive, and frivolous pleadings. *See, e.g.,* Order dated Nov. 26, 2019, *Merkle v. Gragg, et. al*, Civil No. SA:19-cv-640, ECF No. 24 ("The Court notes that Judge Gargotta has previously warned Merkle against filing further abusive and frivolous pleadings, and the Court re-iterates that warning.") (Rodriguez, J.); *see also* Order dated Sept. 16, 2019, Civil No. 18-cv-588, ECF No. 43 (Farrer, M.J.) (warning Plaintiff that "instituting further frivolous or vexatious appeals, or engaging in frivolous or vexations motions practice, in any case in this Court will subject him to sanctions. Likewise, he is further warned that engaging in *ad hominem* attacks against opposing parties or their counsel will have similar consequences, as will failing to comply with the local rules or the governing rules of civil procedure. The possible consequences include but are not limited to monetary sanctions and the issuance of a pre-filing injunction.").

6. Similarly, all of Mr. Hobbs's actions/omissions of which Plaintiff complains were taken in his role as a United States Trustee and under color of such office. Removal is, therefore, proper pursuant to Title 28 U.S.C. § 1442(a)(1).

7. Attached hereto as **Exhibit 2** is a certification that Judge Gargotta and Mr. Hobbs were acting within the scope of their federal employment at the time of the events out of which this suit arose.

8. Judge Gargotta and Mr. Hobbs have not been served with the Petition.

9. No trial has been set or held in this matter.

10. Pursuant to the provisions of 28 U.S.C. § 1446(d), a Notice of Filing Notice of Removal will be filed with the 288th Judicial District Court in Bexar County, Texas, a true and correct copy of which is attached hereto as **Exhibit 3**.

11. Pursuant to Local Court Rule CV-3(a), a JS 44, Civil Cover Sheet is attached hereto as **Exhibit 4**.

12. As this federal case is being initiated via removal, a Supplement to JS 44 is attached hereto as **Exhibit 5**.

WHEREFORE, Defendant United States of America provides this Notice that the action now pending in the 288th Judicial District Court, Bexar County, Texas against Defendants David S. Gragg, Natalie Friend Wilson, Patrick Autry, Craig A. Gargotta, Henry G. Hobbs, Jr., Johnny W. Thomas and Defendant United States of America is removed to this Court.

Respectfully submitted,

JOHN F. BASH
UNITED STATES ATTORNEY

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that on May 1, 2020, a true and correct copy of the foregoing Notice of Removal was electronically filed via the Court's CM/ECF system and served upon the following Pro Se Plaintiff via certified mail and e-mail to:

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